

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 22, 2021

No. 21-10007

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAMES LEWIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:13-CR-177-1

Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:*

James Lewis has appealed the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). Lewis's notice of appeal was filed 22 days after entry of the order appealed from and, therefore, was untimely. *See FED. R. APP. P. 4(b)(1)(A)(i).*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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The Government contends that the appeal should be dismissed. The Rule 4(b) time limit, although not jurisdictional, is mandatory. *United States v. Hernandez-Gomez*, 795 F.3d 510, 511 (5th Cir. 2015); *see also Manrique v. United States*, 137 S. Ct. 1266, 1272 (2017). The Government may waive the time limitation but does not do so where, as here, it contests the timeliness of the notice of appeal in its first substantive filing. *See Hernandez-Gomez*, 795 F.3d at 511.

A district court may extend the time to file a notice of appeal “for a period not to exceed 30 days from the expiration of the time otherwise prescribed” based on a finding of excusable neglect or good cause. FED. R. APP. P. 4(b)(4). Lewis’s notice of appeal, filed within the 30-day period, is construed as a motion for an extension of time based on excusable neglect. *See United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984).

Accordingly, this case is REMANDED to the district court for the limited purpose of determining whether there is excusable neglect or good cause to warrant an extension of time. Upon making this finding, the district court shall promptly return the case to this court for further proceedings. Lewis’s motion for leave to supplement the record on appeal is CARRIED with the case.